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physical safety of either actual or potential confidential informants and witnesses, and of investigators/law enforcement personnel. In addition, the notification requirement of subsection (e)(3) could impede collection of that information from the record subject, making it necessary to collect the information solely from third party sources and thereby inhibiting law enforcement efforts.

(7) From subsection (e)(5) because many of the records in this system are derived from other domestic record systems and therefore it is not possible for the DEA and EPIC to vouch for their compliance with this provision. In addition, EPIC supports but does not conduct investigations; therefore, it must be able to collect information related to illegal drug and other criminal activities and encounters for distribution to law enforcement and intelligence agencies that do conduct counter-drug investigations. In the collection of information for law enforcement and counter-drug purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. The restrictions imposed by (e)(5) would limit the ability of those agencies' trained investigators and intelligence analysts to exercise their judgment in conducting investigations and impede the development of intelligence necessary for effective law enforcement and counterterrorism efforts. EPIC has, however, implemented internal quality assurance procedures to ensure that ESS data is as thorough, accurate, and current as possible. ESS is also exempt from the requirements of subsection (e)(5) in order to prevent the use of a challenge under subsection (e)(5) as a collateral means to obtain access to records in the ESS. ESS records are exempt from the access and amendment requirements of subsection (d) of the Privacy Act in order to protect the integrity of investigations. Exempting ESS from subsection (e)(5) serves to prevent the assertion of challenges to a record's accuracy, timeliness, completeness, and/or relevance under sub-

section (e)(5) to circumvent the exemption claimed from subsection (d).

(8) From subsection (e)(8) because to require individual notice of disclosure of information due to compulsory legal process would pose an impossible administrative burden on the DEA and EPIC and could alert the subjects of counter-drug, counterterrorism, law enforcement, or intelligence investigations to the fact of those investigations when not previously known. Additionally, compliance could present a serious impediment to law enforcement as this could interfere with the ability to issue warrants or subpoenas and could reveal investigative techniques, procedures, or evidence.

(9) From subsection (g) to the extent that the system is exempt from other specific subsections of the Privacy Act.

[Order No. 88-94, 59 FR 29717, June 9, 1994, as amended by Order No. 127-97, 62 FR 2903, Jan. 21, 1997; Order No. 009-2003, 68 FR 14140, Mar. 24, 2003; 72 FR 54825, Sept. 27, 2007]

§ 16.99 Exemption of the Immigration and Naturalization Service Systems-limited access.

(a) The following systems of records of the Immigration and Naturalization Service are exempt from 5 U.S.C. 552a (c) (3) and (4), (d), (e) (1), (2) and (3), (e) (4)(G) and (H), (e) (5) and (8), and (g):

(1) The Immigration and Naturalization Service Alien File (A-File) and Central Index System (CIS), JUSTICE/INS-001A.

(2) The Immigration and Naturalization Service Index System, JUSTICE/INS-001 which consists of the following subsystems:

(i) Agency Information Control Record Index.

(ii) Alien Enemy Index.

(iii) Congressional Mail Unit Index.

(iv) Air Detail Office Index.

(v) Anti-smuggling Index (general).

(vi) Anti-smuggling Information Centers Systems for Canadian and Mexican Borders.

(vii) Border Patrol Sectors General Index System.

(viii) Contact Index.

(ix) Criminal, Narcotic, Racketeer and Subversive Indexes.

(x) Enforcement Correspondence Control Index System.

- (xi) Document Vendors and Alterers Index.
- (xii) Informant Index.
- (xiii) Suspect Third Party Index.
- (xiv) Examination Correspondence Control Index.
- (xv) Extension Training Enrollee Index.
- (xvi) Intelligence Index.
- (xvii) Naturalization and Citizenship Indexes.
- (xviii) Personnel Investigations Unit Indexes.
- (xix) Service Look-Out Subsystem.
- (xx) White House and Attorney General Correspondence Control Index.
- (xxi) Fraudulent Document Center Index.
- (xxii) Emergency Reassignment Index.
- (xxiii) Alien Documentation, Identification, and Telecommunication (ADIT) System.

The exemptions apply to the extent that information in these subsystems is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(3) The Immigration and Naturalization Service "National Automated Immigration Lookout System (NAILS) JUSTICE/INS-032." The exemptions apply only to the extent that records in the system are subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure pursuant to the routine uses published for these subsystems would permit the subject of a criminal or civil investigation to obtain valuable information concerning the nature of that investigation and present a serious impediment to law enforcement.

(2) From subsection (c)(4) since an exemption is being claimed for subsection (d), this subsection will not be applicable.

(3) From subsection (d) because access to the records contained in these subsystems would inform the subject of a criminal or civil investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and

present a serious impediment to law enforcement.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction. In the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal or civil investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsections (e)(4) (G) and (H) because these subsystems of records are exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(8) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability

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of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(9) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(10) From subsection (g) because these subsystems of records are compiled for law enforcement purposes and have been exempted from the access provisions of subsections (d) and (f).

(11) In addition, these systems of records are exempt from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H) to the extent they are subject to exemption pursuant to 5 U.S.C. 552a(k)(1). To permit access to records classified pursuant to Executive Order would violate the Executive Order protecting classified information.

(c) The Border Patrol Academy Index Subsystem is exempt from 5 U.S.C. 552a (d) and (f).

This exemption applies only to the extent that information in this subsystem is subject to exemption pursuant to 5 U.S.C. 552a(k).

(d) Exemptions for the particular subsections are justified for the following reasons.

(1) From subsection (d) because exemption is claimed only for those testing and examination materials used to determine an individual's qualifications for retention and promotion in the Immigration and Naturalization Service. This is necessary to protect the integrity of testing materials and to insure fair and uniform examinations.

(2) From subsection (f) because the subsystem of records has been exempted from the access provisions of subsection (d).

(e) The Orphan Petitioner Index and Files (Justice/INS-007) system of records is exempt from 5 U.S.C. 552a(d). This exemption applies only to the extent that information in this system is

subject to exemption pursuant to 5 U.S.C. 552a(k)(1).

(f) Exemption from paragraph (d) of this section is claimed solely because of the possibility of receipt of classified information during the course of INS investigation of prospective adoptive parents.

Although it would be rare, prospective adoptive parents may originally be from foreign countries (for example) and information received on them from their native countries may require classification under Executive Order 12356 which safeguards national security information. If such information is relevant to the INS determination with respect to adoption, the information would be kept in the file and would be classified accordingly. Therefore, access could not be granted to the record subject under the Privacy Act without violating E.O. 12356.

(g) The Office of Internal Audit Investigations Index and Records (Justice/INS-002) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5) and (8); and (g), but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(h) The following justification apply to the exemptions from particular subsections:

(1) From subsection (c)(3) because the release of the disclosure accounting for disclosure could permit the subject of an actual or potential criminal or civil investigation to obtain valuable information concerning the existence and nature of the investigation, the fact that individuals are subjects of the investigation, and present a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that the exemption from subsection (d) is applicable. Subsection

(c)(4) will not be applicable to the extent that records in the system are properly withholdable under subsection (d).

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; of the identity of confidential sources, witnesses and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation; endanger the physical safety of confidential sources, witnesses, and law enforcement personnel; and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) because in the course of criminal or civil investigations, the Immigration and Naturalization Service often obtains information concerning the violation of laws other than those relating to violations over which INS has investigative jurisdiction, in the interests of effective law enforcement, it is necessary that INS retain this information since it can aid in establishing patterns of criminal activity and provide valuable leads for those law enforcement agencies that are charged with enforcing other segments of the criminal law.

(5) From subsection (e)(2) because in a criminal investigation, the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law enforcement in that the subject of the investigation

would be placed on notice of the existence of the investigation and would therefore be able to avoid detection or apprehension.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment of criminal law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life or physical safety of confidential informants.

(7) From subsection (e)(5) because in the collection of information for criminal law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to criminal law enforcement as this could interfere with the Immigration and Naturalization Service's ability to issue administrative subpoenas and could reveal investigative techniques and procedures.

(9) From subsection (g) for those portions of this system of records that were compiled for criminal law enforcement purposes and which are subject to exemption from the access provisions of subsections (d) pursuant to subsection (j)(2).

(i) The Law Enforcement Support Center Database (LESC) (Justice/INS-023) system of records is exempt under the provisions of 5 U.S.C. 552a(j)(2) from subsections (c) (3) and (4); (d); (e) (1), (2), (3), (5), (8) and (g); but only to the extent that this system contains records within the scope of subsection

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(j)(2), and to the extent that records in the system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in the system are subject to exemption therefrom.

(j) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of a criminal or civil investigation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to their activities; and of information that may enable the subject to avoid detection or apprehension. Such disclosures would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation or other law enforcement operation such as deportation or exclusion. In addition, granting access to these records could result in a disclosure that would constitute an unwarranted invasion of the privacy of third parties. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to criminal law enforcement

in that it could compromise the existence of a confidential investigation.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that this system is exempt from the access and amendment provisions of subsection (d).

(k) The Attorney/Representative Complaint/Petition File (JUSTICE/INS-022) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(l) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the access and amendment provisions of subsection (d).

(m) The Worksite Enforcement Activity and Records Index (LYNX) (JUSTICE/INS-025) system of records is exempt under the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3) and (4); (d); (e)(1), (2), (3), (5), and (8); and (g); but only to the extent that this system contains records within the scope of subsection (j)(2), and to the extent that records in this system are subject to exemption therefrom. In addition, this system of records is also exempt in part under the provisions of 5 U.S.C. 552a(k)(2) from subsections (c)(3); (d); and (e)(1), but only to the extent that this system contains records within the scope of subsection (k)(2), and to the extent that records in this system are subject to exemption therefrom.

(n) The following justifications apply to the exemptions from particular subsections:

(1) From subsection (c)(3) for reasons stated in paragraph (h)(1) of this section.

(2) From subsection (c)(4) for reasons stated in paragraph (h)(2) of this section.

(3) From the access and amendment provisions of subsection (d) for reasons stated in paragraph (h)(3) of this section.

(4) From subsection (e)(1) for reasons stated in paragraph (h)(4) of this section.

(5) From subsection (e)(2) for reasons stated in paragraph (h)(5) of this section.

(6) From subsection (e)(3) for reasons stated in paragraph (h)(6) of this section.

(7) From subsection (e)(5) for reasons stated in paragraph (h)(7) of this section.

(8) From subsection (e)(8) for reasons stated in paragraph (h)(8) of this section.

(9) From subsection (g) to the extent that the system is exempt from the ac-

cess and amendment provisions of subsection (d).

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 688-77, 42 FR 10001, Feb. 18, 1977; Order No. 6-84, 49 FR 20812, May 17, 1984; Order No. 25-88, 53 FR 41161, Oct. 20, 1988; Order No. 137-97, 62 FR 34169, June 25, 1997; Order No. 142-97, 62 FR 44083, Aug. 19, 1997; Order No. 196-2000, 65 FR 21139, Apr. 20, 2000; Order No. 197-2000, 65 FR 21140, Apr. 20, 2000]

§ 16.100 Exemption of Office of Justice Programs—limited access.

(a) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Civil Rights Investigative System (JUSTICE/OJP-008).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2).

(b) Exemption from subsection (d) is claimed since access to information in the Civil Rights Investigative System prior to final administrative resolution will deter conciliation and compliance efforts. Consistent with the legislative purpose of the Privacy Act of 1974, decisions to release information from the system will be made on a case-by-case basis and information will be made available where it does not compromise the complaint and compliance process. In addition, where explicit promises of confidentiality must be made to a source during an investigation, disclosure will be limited to the extent that the identity of such confidential sources will not be compromised.

[Order No. 645-76, 41 FR 12640, Mar. 26, 1976, as amended by Order No. 5-78, 43 FR 36439, Aug. 17, 1978; Order No. 43-80, 45 FR 6780, Jan. 30, 1980; Order No. 6-86, 51 FR 15479, Apr. 24, 1986; Order NO. 6-236-2001, 66 FR 35374, July 5, 2001]

§ 16.101 Exemption of U.S. Marshals Service Systems—limited access, as indicated.

(a) The following system of records is exempt from 5 U.S.C. 552(a)(c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(5), (e)(8), (f) and (g):

(1) Warrant Information System (JUSTICE/USM-007).

These exemptions apply only to the extent that information in this system is